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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/535,300 | 03/24/2000 | Alan W. Schwabacher | 2003118-0001 | 2305 |

7590

12/23/2002

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EXAMINER

BAKER, MAURIE GARCIA

ART UNIT

PAPER NUMBER

1639

DATE MAILED: 12/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/535,300

Applicant(s)

Schwabacher et al

Examiner

Maurie G. Baker, Ph.D.

Art Unit

1639



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED Dec 9, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires THREE months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Dec 9, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see NOTE below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please see attached.

3. ☒ Applicant's reply has overcome the following rejection(s):
Please see attached.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____
- Claim(s) objected to: _____
- Claim(s) rejected: 1, 3, 4, 6-8, 10, 11, 13, and 30-50
- Claim(s) withdrawn from consideration: 9 and 12
8. ☐ The proposed drawing correction filed on _____ is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

MAURIE G. BAKER, PH.D.
PATENT EXAMINER
ART UNIT 1639

ADVISORY ACTION
Attachment

Please note: The number of Art Unit 1627 has been changed to 1639. Please direct all correspondence for this case to **Art Unit 1639**.

1. Applicant's After Final amendment filed December 9, 2002 raises considerable new issues which would require further search and/or consideration and does not place the case in better form for appeal or in condition for allowance. Thus the amendment will not be entered.
2. It is noted for the record that some of the proposed amendments would obviate *some* of the *previous* rejections under 35 U.S.C. 112, first and second paragraphs, if the amendments were entered in further prosecution of the instant case. However, the proposed amendments to the claims *raise new issues* under 35 U.S.C. 112, second paragraph and/or 35 U.S.C. 112, first paragraph (e.g. new matter).
3. Applicant's arguments are moot in view of the non-entry of the amendment. Due to the non-entry of the amendment, all previous rejections are maintained for reasons of record. Moreover, the portions of applicant's arguments directed at claims unaffected by the proposed After Final amendment were not found persuasive.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurie Garcia Baker, Ph.D. whose telephone number is

(703) 308-0065. The examiner can normally be reached on Monday-Thursday from 9:00 to 6:30 and alternate Fridays.

5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Wang, can be reached at (703) 306-3217. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Maurie Garcia Baker, Ph.D.
December 20, 2002

A handwritten signature in black ink, appearing to be 'MB' followed by a long horizontal stroke.

MAURIE GARCIA BAKER, Ph.D.
PATENT EXAMINER